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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

RUDOLF DEHAAN,)	
)	
Plaintiff,)	
)	
vs.)	Case No.07-CV-257J
)	
PERRY ROCKVAM, individually)	
and as representative for)	
CODY POLICE DEPARTMENT, and)	
CODY POLICE DEPARTMENT, and)	
SCOTT A. STEWARD,)	
individually and as)	
representative for PARK)	
COUNTY SHERIFF'S DEPARTMENT)	
AND DETENTION CENTER, and)	
PARK COUNTY SHERIFF'S OFFICE)	
AND DETENTION CENTER, and)	
OFFICER TORIN CHAMBERS, and)	
JOHN DOES #1-#6,)	
)	
Defendants.)	

**DEFENDANTS' MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT**

COME NOW the Defendants, Perry Rockvam and Scott A. Steward, in their official capacities and the Cody Police Department and the Park County Sheriff's Department and Detention Center ("Defendants" or as individually

identified), and submit their Memorandum In Support Of Motion For Summary Judgment.

STATEMENT OF FACTS

On October 29, 2004, at approximately 8:26 pm, the Plaintiff, Rudolph Dehaan, Sr. ("Plaintiff" or "Dehaan") was arrested on a warrant for violation of a protective order. Officers Chan Richard, Jon Beck, and Jason Stafford located the Plaintiff at the Wigwam Hotel in Cody, Wyoming, where the Plaintiff was currently residing. Officer Stafford attempted to handcuff the Plaintiff but was unable to because of a cast on the Plaintiff's right arm. Officer Stafford then searched the Plaintiff and placed him in Officer Richard's patrol car. Officer Richard took the Plaintiff to the Park County Detention Center (Detention Center) where the Plaintiff was booked. (Exhibit 1).

The Plaintiff alleges that he was confronted by Sergeant Torin Chambers, who is not named as being present at the scene in the police report (Exhibit 1), on October 29, 2004, and that Sgt. Chambers grabbed and twisted his previously injured arm behind his back. The Plaintiff then alleges that Sgt. Chambers threw the Plaintiff on the ground and landed on top of him and that there was an audible snapping sound when Sgt. Chambers landed on him. The Plaintiff allegedly begged officer Chambers to let go

of his arm when Officer Richards arrived and yelled at Sgt. Chambers to get off of the Plaintiff. (Complaint, ¶¶ 12-17).

The Plaintiff was booked into the Park County Detention Center on October 29, 2004, at approximately 8:40 pm. At the time of his booking, the booking officer noted that he had a broken right arm and wrist that were approximately one and an half weeks old. He was held at the Detention Center until November 3, 2004, at which time he was transferred to the Big Horn County Detention Center. He was released from the Big Horn County Detention Center on November 7, 2004. (Exhibit 2).

On October 29, 2004, the Detention Center completed a medical screening form where it was noted that there was no visible signs of trauma that needed immediate medical care and the Plaintiff did not have pain, bleeding, or other symptoms suggesting the need for medical services.

(Exhibit 3). On November 2, 2004, at 11:10 am, the Plaintiff filled out a Non-Emergency Medical Request/Consent Form that stated the nature of his problem was a broken arm and that it was a work related injury.

(Exhibit 4). While at the Detention Center, the Plaintiff made several requests for medical treatment. During these requests, the Plaintiff was given medication for the pain

in his arm and the Detention Center requested and received the medical records from the Kemmerer Hospital regarding this injured arm. (Exhibit 5).

The Plaintiff claims that while he was detained at the Detention Center, that he requested medical treatment for obvious signs of trauma to his arm and all requests were denied. The Plaintiff alleges that his arm, wrist, and hand were so swollen that his fingers were discolored and his skin was near splitting from the pressure. Plaintiff alleges that he was continually denied medical treatment until he was transferred to Big Horn County Detention facility, at which time he was given medical treatment. He was seen by a physician who referred him to an orthopedic specialist. The orthopedic specialist determined that the Plaintiff had a compound fracture, that it had nearly broken through the skin, and that it had begun to heal incorrectly while being housed at Park County. The Plaintiff's arm had to be re-set using plates and screws. (Complaint, ¶¶ 18-22).

The Plaintiff filed his Complaint with this Court on October 16, 2007. In his Complaint he alleges seven causes of action: (I) Fourth Amendment Violation For Use of Excessive Force -- 42 U.S.C. § 1983, (II) Fourth Amendment Violation For Use of Excessive Force -- Supervisory

Liability -- Cody Police Department -- 42 U.S.C. § 1983, (III) Eighth Amendment Violation Cruel and Unusual Punishment -- 42 U.S.C. § 1983, (IV) Eighth Amendment Violation Cruel and Unusual Punishment -- Supervisory Liability -- Park County Sheriff's Department and Detention Center -- 42 U.S.C. § 1983, (V) State Law -- Negligence and Negligent Hiring, (VI) Battery, and (VII) Attorney's Fees Pursuant to 42 U.S.C. § 1983. The Defendants filed their Answer and Assertion of Affirmative Defenses on December 3, 2007.

ARGUMENT

Of the seven claims plead in the Plaintiff's Complaint, only claim II, IV, and V assert a claim of action against these Defendants. Claims I, III, and IV appear to be directed to the Defendants in their individual capacity. Claim VII is a claim for attorney's fees pursuant to 42 U.S.C. § 1983 and there is no response necessary at this time.

I.

The first hurdle the Plaintiff has to establish in proving Claims I and III is that there was a constitutional violation. There can be no municipal liability in § 1983 cases unless there is an underlying constitutional violation committed by an officer of the municipality.

Olsen v. Layton Hills Mall, 312 F.3d 1304, at 1317-1318 (10th Cir. 2002). There is no evidence of a violation of any of the Plaintiff's constitutional rights and these Defendants will rely on the arguments set forth in the Memorandum for Summary Judgment filed by the individual Defendants regarding this issue.

II.

If the Plaintiff is able to prove a constitutional violation, in order to establish municipal liability under Section 1983 (and to survive a motion for summary judgment at this stage), a plaintiff must (1) identify and prove that the entity defendant is the "moving force" behind an alleged constitutional violation or deprivation, or that an individual defendant is responsible for those same violations or deprivations; (2) identify and prove what "policy and custom" or conduct of the entity is relevant or applicable, or what a named individual's action or conduct was; (3) identify and prove what specific constitutionally protected right or interest of the plaintiff was violated or he was deprived of; and, (4) how the entity's "policy and custom" or conduct, or how the individual's action or conduct, operated to and caused the violation or deprivation. *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 829 (1985) (Brennen, J. concurring). Failure to

satisfy these minimum requirements mandates that summary judgment for the defendants be granted. Most importantly here, when suing a municipality (and suing a public entity official in his "official capacity" is simply another way of suing the entity itself) a plaintiff can only establish liability if he can establish that the entity had a policy, ordinance, regulation, practice, procedure or custom officially "adopted" by the entity that operated to deprive the plaintiff of his constitutionally protected rights. *Monell v. New York City Department of Social Services*, 436 U.S. 658, 690 (1978); *City of Oklahoma City v. Tuttle*, *supra*; *Simmons v. Uintah Health Care District*, 506 F.3d 1281 (10th Cir. 2007).

In order to establish a case based on a custom, a plaintiff must establish that the specific conduct complained of (the focus must always be on the specific facts that allegedly constitute the unconstitutional acts, here, the excessive use of force and the cruel and unusual punishment) truly reflects practices of the public officials are so permanent, pervasive, and well settled as to constitute a "custom or usage" with the force of law. The "custom and usage" in question will be attributed to the governmental body only when the "duration and frequency of the practice warrants a finding of either actual or

constructive knowledge by the ...governing body [or the policymaker with responsibility for oversight and supervision] that the practices have become customary among its employees. *Spell v. McDaniel*, 824 F.2d 1380, 1387 (4th Cir. 1987); compare *Thomas v. City of Chattanooga*, 398 F.3d 426, 434 (6th Cir. 2005)(plaintiff bears the "heavy burden" to prove a "clear and consistent pattern of illegal activity" of which the Department knew yet remained "deliberately indifferent about, and that the "custom or usage" was the proximate cause of the deprivation; the standard of evaluation is "deliberate indifference" which does not mean sloppy, negligent or even reckless conduct; it means evidence showing an obvious, deliberate indifference). See also, *Williams v. Paint Valley Local School District*, 400 F.3d 360, 369 (6th Cir. 2005)(evidence must show that the need to act is so obvious that the entity's *conscious* decision not to act amounted to "deliberate indifference."). It is also well established that a single incidence of unconstitutional action is insufficient to establish a "custom or usage" under the law. *Thomas v. City of Chattanooga*, *supra*; *Alexander v. City of South Bend*, 433 F.3d 550, 557-8 (7th Cir. 2006); *Pineda v. City of Houston*, 291 F.3d 325, 329-331 (5th Cir. 2002)(11 incidents insufficient). See also, *City of*

Oklahoma City v. Tuttle, *infra* (single incident of inadequate training insufficient). The above standard is used to determine municipal liability in the claim of excessive force and cruel and unusual punishment. The Defendants will address its claim separately using the above standard.

A.

**Claim II: Fourth Amendment Violation For Use
Of Excessive Force -- Supervisory Liability --
Cody Police Department -- 42 U.S.C. § 1983**

The Plaintiff claims that his Fourth Amendment was violated by the use of excessive force against him by Officer Chambers on October 29, 2004. He claims that the Cody Police Department is liable due to an official custom or policy of "knowingly, recklessly, or with deliberate indifference and callous disregard failed to instruct, supervise, control, and discipline on a continuing basis Officer Chambers in his duty to refrain from unlawfully, maliciously, intentionally, and/or recklessly assaulting and beating a citizen or otherwise using objectively unreasonable and excessive force before, during or after the making of an arrest, or other citizen encounter." Plaintiff further claims that Chief Rockvam, as Chief of the Cody Police Department, had knowledge of such behavior or that had he diligently exercised his duties to

supervise, train, control or discipline, should have known, and that he "approved or ratified the unlawful, deliberate, malicious, reckless and wanton conduct of Chamber." As a direct result of the acts, errors, and omissions of Chief Rockvam, Plaintiff suffered injuries. (Complaint, ¶¶ 3-7).

Using the above standard, it is apparent in this case, that there is no policy, ordinance, regulation, practice, procedure, or custom of the Defendants that operated to deprive the Plaintiff of any of his civil rights. In fact, the Plaintiff has made no effort whatsoever to even attempt to identify such an official policy, *et cetera* (and it is his burden to do so); we do not know, for example, whether he is claiming the Cody Police Department's policies were appropriate yet not followed, or were inadequate in some respect and why, or that there were informal customs or practices that were inappropriate, or whether there was a failure to train or supervise as to the appropriate policies. Further, at his deposition, the Plaintiff admitted that he had no knowledge of the Cody Police Department's policies and procedures in regards to training, hiring, or supervising.

Second, the Plaintiff has offered no evidence of a custom of the Cody Police Department that acted to violate his constitutional rights. Even assuming that all of the

facts alleged by the Plaintiff are true, the Plaintiff has still failed to meet his burden of proof. He has brought forth no evidence of similar situations at the Cody Police Department neither before nor after the alleged incident on October 29, 2004. In fact, the officer that he is alleging committed the alleged violation was not even present at the time of the arrest.

Summary judgment should be granted to the Defendants on this claim.

B.

Claim IV: Eighth Amendment Violation Cruel and Unusual Punishment -- Supervisory Liability -- Park County Sheriff's Department and Detention Center -- 42 U.S.C. § 1983

The Plaintiff claims that while he was confined at the Park County Detention Center, the Defendants "knowingly, recklessly, or with deliberate indifference and callous disregard of Plaintiff's rights, failed to instruct, supervise, control, and discipline the Park County Sheriff's Department and Detention Center and unlawfully, maliciously, intentionally, and/or recklessly ignored the Plaintiff's request for medical attention," and as a direct cause the Plaintiff suffered injuries. (Complaint, ¶¶ 3-7).

Once again, using the above standard, the Plaintiff has failed to meet his burden of proof. He has failed to identify a policy, ordinance, regulation, practice, procedure, or custom of the Defendants that operated to deprive the Plaintiff of his civil rights. In fact, during his deposition, he admitted that he had no knowledge of Park County Detention Center's training, supervising, or disciplining policies. Further, he has failed to establish a custom that operated to deprive him of his civil rights. He has not put forth any evidence of similar treatment to other detainees or inmates.

Summary judgment should be granted to the Defendants on this claim.

III.

In Claim IV: State Law Negligence and Negligent Hiring, the Plaintiff claims that Chief Rockvam, the Cody Police Department, Sheriff, Scott Steward, and the Park County Sheriff's Department and Detention Center "breached their duties by not hiring competent and law-abiding employees, as well as failing to supervise and/or discipline said employees, and by failing to offer competent medical care to detainees/inmates in their custody." These Defendants can only be held liable for this claim under a respondeat superior theory. Therefore,

the Defendants will rely on the arguments set forth in the Memorandum for Summary Judgment filed by the Defendants in their individual capacities.

CONCLUSION

Therefore, for the foregoing reasons, the Defendants respectfully request that the court grant summary judgment in the Defendants' favor.

Dated this 16th day of June 2008.

Cody Police Department, *et al.*,
Defendants

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CERTIFICATE OF SERVICE

I, RICHARD RIDEOUT, do hereby certify that a true and correct copy of the foregoing **DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** was served by electronic filing, this 16th day of June 2008, addressed as follows:

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